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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,070	10/31/2003	Bernhard Awolin	J&J-5083	3738

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EXAMINER	
HAND, MELANIE JO	
ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,070	AWOLIN ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The limitation set forth in dependent claim 13 is previously set forth in the independent claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. (U.S. Patent No. 5,185,010) in view of Olson et al (U.S. Patent No. 5,916,205)

With respect to **Claims 1,4,5,7,9-16,19,20,22,24:** Brown teaches a tampon formed from absorbent material 12 cut into a rectangle with outer end 21 having a length, thickness and width, wherein said width is measured between the two edges of absorbent material 12 that will correspond to the introduction and withdrawal ends of the tampon once said tampon is formed. The rectangular tampon precursor material also contains liquid-permeable plastic overwrap material 10 adhered to inner surface 13 of absorbent material 12 to form seal 16. Overwrap material 10 extends beyond the outer edge 21 of material 12 to form tab 14. Overwrap 10 is considered herein to have a width generally corresponding to the width of material 12 since the fold over regions 18 are narrow. Seals 16 are formed at the edge of absorbent material 12 that corresponds to the withdrawal end of said tampon. A tampon is formed by winding absorbent material 12 in a spiral fashion starting at end 20. (Fig. 1c) (Col. 2, lines 67,68)

Brown does not teach that overwrap material has a liquid-resistant zone. Olson teaches an absorbent interlabial device 20 that comprises a topsheet 42, absorbent core 22 and impermeable backsheet 38 comprised of a polymeric thermoplastic film. Topsheet 42 and backsheet 38 are joined together in the area of flexible extensions 24. Although Olson teaches that the topsheet 42 and backsheet 38 are attached to opposite surfaces of absorbent core 22, backsheet 38 is considered herein to be capable of being repositioned so as to be disposed between topsheet 42 and core 22, a structure that renders claim 1 unpatentable. It has been held that rearranging elements of an invention involves only routine skill in the art. See *In re* Japikse, 86 USPQ 70 (CCPA 1950) Olson teaches that backsheet 38 prevents leakage of exudates from device 20 onto a user's undergarment, therefore ti would be obvious to one of ordinary skill in the art to modify the material taught by Brown by attaching an impermeable film to the absorbent core-facing surface of overwrap material 10 such that the film is coterminal with

overwrap material 10, since the material is wound around itself, allowing an impermeable sheet between the overwrap material and the absorbent core to serve its proper function.

With respect to **Claim 6,21,27:** Brown teaches that the overlap material must be heat-sealable and that it is a thermoplastic nonwoven, but does not explicitly teach an apertured film. Olson teaches cover material 102 for forming covers 46 for plural devices 20 that comprises an apertured thermoplastic film. ('205, Col. 20, lines 28-30, 33) With respect to Claim 27, by teaching an apertured film, Olson is also teaching that perforations can be made in cover material 102 that enable the separation of adjacent absorbent segments from one another in the production process, said perforations or apertures defining separation lines. Olson teaches that this is a suitable material for a cover sheet for an absorbent interlabial device ('205, Col. 20, lines 30-32), therefore it would be obvious to modify the overwrap material taught by Brown to comprise an apertured thermoplastic film as taught by Olson.

With respect to **Claim 8,23:** Brown does not explicitly teach that overlap material 10 is treated to be liquid impermeable, however, since said material is a nonwoven web, and nonwoven webs are capable of being treated with surfactants or other means to be liquid-impermeable, the overlap material 10 is considered herein to be capable of being treated.

With respect to **Claims 17,18:** Brown teaches that different sealing methods may be used and specifically cites heat sealing and adhesives. ('010, Col. 3, lines, 27, 28, 52, 53)

With respect to **Claim 25:** Please see the rejection of Claim 1 in addition to the following: Brown does not teach attaching a plurality of absorbent elements 12 to a continuous sheet of overwrap

material 10. Olson teaches a process for forming plural interlabial devices comprising the steps of placing plural slivers of absorbent material 100 to a web of cover material 102, bonding said cover material to said absorbent material, feeding said structure through rollers that roll the cover material 102 around the absorbent sliver 100 and bond the two free edges of cover material 102 together, and cutting the continuous bonded absorbent-cover web in the cross direction. Olson teaches that this process forms a plurality of interlabial devices at one time. While this procedure is intended to form several devices, Examiner considers this process fully applicable to the teaching of Brown, wherein said process is capable of forming a tampon by placing multiple slivers of absorbent material 12 on a continuous web of overwrap material, and subsequently winding the resulting structure into a tampon as taught by Brown, said tampon having plural absorbent segments 12, having a length and width oriented parallel to the length and width dimensions of overwrap material 12. therefore it would be obvious to one of ordinary skill in the art to modify the process of forming a tampon taught by Brown so as to utilize the process taught by Olson to accommodate the production of a tampon having plural absorbent segments.

With respect to **Claims 28,29:** Brown does not teach a plurality of absorbent segments and thus does not teach perforations in said overwrap material. Since Olson teaches that cover material 102 is a polypropylene nonwoven, which is stretchable, therefore the space between adjacent absorbent segments 100 can be thinned simply by applying a longitudinal force to stretch the cover material 102. Thinning the material would provide a noticeable demarcation between adjacent segments and is an alternate method for creating a separation line or area to the method taught by Olson involving using apertured cover material 102. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art

recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PATENT EXAMINER